



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Sullair Corporation

**File:** B-259127

**Date:** February 22, 1995

---

### DECISION

Sullair Corporation protests the award of a contract to the Ingersoll-Rand Corporation under request for proposals (RFP) No. SP0730-94-R-7045, issued by the Defense Logistics Agency (DLA) for air compressors. The protester argues that the compressor offered by Ingersoll-Rand is not a standard commercial product as required by the RFP.

We dismiss the protest as untimely because it was filed more than 10 working days after the protester initially received actual knowledge of adverse agency action on its agency-level protest.

The RFP, issued on April 29, 1994, required that the equipment offered be a "standard commercial product" marketed by the offeror and in "commercial field use" for a minimum of 1 year prior to closing. Three offerors, including Sullair and Ingersoll-Rand, responded to the RFP by the time set on May 31 for receipt of proposals. DLA held discussions; requested best and final offers from all three offerors; and on August 25, awarded the contract to Ingersoll-Rand. By letter dated September 7, Sullair filed an agency-level protest challenging the award on the basis that the compressor offered by Ingersoll-Rand was not a standard commercial product as required by the RFP. DLA denied Sullair's protest in a letter dated October 6. Sullair filed the instant protest in our Office on October 26.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely, must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3) (1994). The term "adverse agency action" is defined in our Bid Protest Regulations as any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency. 4 C.F.R. § 21.0(f). The regulation enumerates

specific actions which may constitute adverse agency action, including a decision on the merits of a protest. 4 C.F.R. § 21.0(f).

Here, as shown by a copy of a certified mail receipt contained in the record, Sullair received DLA's October 6 letter denying its protest on October 10. To be timely, therefore, Sullair had to have filed its protest in our Office within 10 working days of that date, or by October 24. Since Sullair did not file its protest until October 26, it is untimely and will not be considered.

*Christine S. Melody*  
Christine S. Melody  
Assistant General Counsel